

# **EXHIBIT I**

Ronald H. Swenson

January 5, 2006

Carson City, NV

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

**CERTIFIED COPY**

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In re: PHARMACEUTICAL : MDL DOCKET NO.

INDUSTRY AVERAGE : CIVIL ACTION

WHOLESALE PRICE :

LITIGATION : 01CV12257-PBS

-----X

THIS DOCUMENT RELATES :

TO: ALL ACTIONS :

-----X

DEPOSITION OF RONALD H. SWENSON

JANUARY 5, 2006

BE IT REMEMBERED that on THURSDAY, the 5th day  
of JANUARY, 2006, at the hour of 9:05 AM of said day,  
at the offices of THE ATTORNEY GENERAL, 100 North  
Carson Street, Carson City, Nevada, before me,  
STEPHANIE ZOLKOWSKI, a notary public, personally  
appeared, RONALD H. SWENSON, who was by me first duly  
sworn and was examined as a witness in said cause.

Henderson Legal Services  
(202) 220-4158

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A P P E A R A N C E S

FOR GLAXOSMITHKLINE: COVINGTON & BURLING

By: JASON R. LITOW, ESQ.

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BATES WHITE

BY: CHRIS STROMBERG, ESQ.

2001 K Street NW, Ste. 700

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(Via telephone)

FOR STATE OF NEVADA: HAGENS BERMAN, LLP

By: JENIPHR BRECKENRIDGE, ESQ.

1301 Fifth Ave.

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and

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I N D E X

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By Mr. Litow	004

E X H I B I T S

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1 RONALD H. SWENSON,  
2 called as a witness herein, having been duly sworn,  
3 testified as follows:  
4

5 EXAMINATION

6 BY MR. LITOW:

7 Q. Good morning, Mr. Swenson. My name is  
8 Jason Litow. I'm from the law firm of Covington  
9 Burling which is in Washington along with my  
10 colleague, Shankar Duraiswamy.

11 Our firm represents GlaxoSmithKline which  
12 is one of the Defendants in this case.

13 Can you please state and spell your name  
14 for the record.

15 A. Sure. It's Ronald H. Swenson. R-o-n-a-l-d  
16 S-w-e-n-s-o-n.

17 Q. And what's your current business address?

18 A. 1340 South Curry Street.

19 Q. Carson City?

20 A. Sorry. Carson City, Nevada 89701.

21 Q. Have you ever been deposed before?

22 A. No.

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1 Q. I'll just explain the process a little bit  
2 for you. I'm going to ask the questions. You will  
3 respond. You need to respond verbally so that the  
4 court reporter can take down a response.

5 At times your attorney may object. Unless  
6 instructed by him or her not to answer the question,  
7 you still have to answer it even though there's an  
8 objection pending.

9 If you don't understand a question, please  
10 ask me to clarify it. I'll be happy to do so. If  
11 you do not ask me to clarify I'll assume you  
12 understood the question.

13 Please let me know any time if you want to  
14 take a break and I can oblige that request so long as  
15 you finished answering the question.

16 A. Okay.

17 Q. Any questions about the process or  
18 anything?

19 A. None at all.

20 Q. Have you ever testified at a trial before?

21 A. No.

22 Q. Have you ever provided legislative hearing

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1 testimony?

2 A. No.

3 Q. Have you ever worked on preparing testimony  
4 for someone else?

5 A. I want to say yes. Yes.

6 Q. When was that?

7 A. It probably would have been maybe in the  
8 last five years.

9 Q. Was it on one occasion?

10 A. Probably on several occasions.  
11 Mostly providing information to my boss  
12 that he would provide to the legislature.

13 Q. What was the nature of the information that  
14 you provided?

15 A. Billing information mostly.

16 I'm trying to think. Mostly billing.  
17 Because we are a service organization. We have the  
18 State as a customer so we need to collect money from  
19 them to pay our bills.

20 Q. Did any of that testimony involve  
21 prescription drug reimbursement issues?

22 A. No.

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1           Q.    Did you meet with any of your attorneys to  
2 prepare for this deposition?

3           A.    Yes.

4           Q.    When was that?

5           A.    Tuesday.

6           Q.    Who was present at that meeting?

7           A.    Jeniphr and myself.

8           Q.    For how long did you meet?

9           A.    I think it was about an hour and a half to  
10 two hours.

11          Q.    Did you review any documents during that  
12 meeting?

13          A.    The documents you have, the COBOL record  
14 layout, the sample data we provided I have the main  
15 drug program we used for adjudicating claims.

16          Q.    When you say the main drug program you  
17 used, is that a document -- what are you referring  
18 to?

19          A.    It's a COBOL program. It's a listing of a  
20 COBOL program.

21          Q.    Any other documents other than the ones you  
22 mentioned?

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1           A.    I think we looked at a memo Chuck Duarte  
2 sent on retention of data. We talked a little bit  
3 about what the lawsuit was about.

4           **Q.    Did you bring any documents with you today?**

5           A.    Yes.

6                   I have the COBOL listing and the document,  
7 the COBOL records layouts.

8           MS. BRECKENRIDGE: Are these the two that  
9 we --

10           THE WITNESS: Yes.

11 BY MR. LITOW:

12           **Q.    Other than the ones you provided to us this**  
13 **morning you didn't bring any other documents with**  
14 **you?**

15           A.    I have a draft copy of some questions that  
16 Jeniphrr sent me.

17           **Q.    Could you please describe your educational**  
18 **background since high school?**

19           A.    Sure.

20                   I have a Bachelor's degree from the  
21 University of Nevada at Reno. I received that in  
22 1979.

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1 I have a Masters Degree in Mathematics from  
2 the University of Nevada with major work in Computer  
3 Science.

4 I've attended several program and training  
5 classes that I can list if you need.

6 Q. That's okay.

7 Starting from the earliest post graduate  
8 employment could you give me your employment history?

9 A. Sure.

10 I worked five years for Washoe County at  
11 the School District. I taught one year at Nixon High  
12 School. I think four years at Trainer Middle School.

13 Q. All of those were teaching? Washoe County,  
14 Nixon and the last one you mentioned were teaching  
15 positions?

16 A. Right.

17 Q. What were you teaching?

18 A. Mostly mathematics. I taught one year of  
19 English.

20 Q. I didn't mean to cut you off.

21 After the third teaching position you were  
22 -- please continue.

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1           A.    At the same time I taught part time at the  
2   University of Nevada in the Mathematics Department.  
3   I taught basic algebra and algebra and trigonometry.  
4   I also worked part time at City of Sparks Recreation  
5   Department as a Softball Field Coordinator.

6           Then in 1984, I started working for the  
7   State. At that time it was the Department of Data  
8   Processing.

9           **Q.    What was your position when you started?**

10          A.    I started out as a trainee. I think --  
11   actually, I forget the name at that time. It was a  
12   trainee position. Programmer trainee.

13          I worked my way up through the ranks to  
14   what would now be an Information Systems Specialist 1  
15   and then a 2 and 3. Currently I'm Information  
16   Systems Specialist 4.

17          **Q.    The name of the department you work in is**  
18   **the Data Processing Department; is that correct?**

19          A.    When I started it was the Department of  
20   Data Processing.

21          We're now known as the Department of  
22   Information Technology.

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1           **Q.   What was the function of the Department of**  
2 **Data Processing when it was called that?**

3           A.   We provided programming services to State  
4 agencies. What they called the non-exempt State  
5 agencies. Motor vehicles, Transportation, the  
6 University System, Gaming, are all called exempt.  
7 They don't have to use our services. But the other  
8 State agencies by statute are required to use our  
9 services.

10          **Q.   You say programming services.**

11               **Can you be more specific?**

12          A.   At that time we did COBOL programming on  
13 IBM main frame. We did system design. Requirements  
14 definition.

15          **Q.   What's COBOL?**

16          A.   It's a program language. It's a common --  
17 gosh, I can't remember. It's common object business  
18 oriented language or something like that.

19          **Q.   Is it still used?**

20          A.   It's still used.

21          **Q.   Now you're under it's called the Department**  
22 **of Information Technology; is that correct?**

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1 A. Correct.

2 Q. What's the function of the Department of  
3 Information Technology?

4 A. It provide a lot of services. We do  
5 telephone and telecommunications, microwave services.  
6 We do planning services. We do quality assurance.  
7 I'm sure I forgot a couple. We do programming  
8 services still. Email. We still run an IBM main  
9 frame. We run server forms.

10 Q. What's your Department's relationship with  
11 the ID Department that's within Medicaid?

12 A. Let me think about this.

13 While we ran the Medicaid Program we would  
14 interface with them. They knew the business rules.  
15 We know the programming side. So we would interface  
16 with that group.

17 They would provide us specifications, we  
18 would code them into the program.

19 Q. Specifically what are your duties as  
20 Information Specialist? What do you do?

21 A. Right now I manage a group of six people  
22 and they all provide programming services in one way

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1 or another to different State agencies in the  
2 Executive Branch.

3 So I manage. I code. I provide input to  
4 our management. But I'd say 90 percent of my time is  
5 spent coding.

6 Mostly nowadays we provide coding in the  
7 Internet world. The client server world. We support  
8 visual basic. Both six zero and dot net. We support  
9 Java applications. We support fox pro applications.  
10 We still support a little bit of COBOL on the main  
11 frame.

12 **Q. To whom do you report?**

13 A. His name is Dan Stockwell. I believe he's  
14 Application Manager.

15 **Q. Just so I'm clear, you do not work within**  
16 **the Department of Health Care Financing and Policy;**  
17 **is that correct?**

18 A. That's correct.

19 **Q. You're in a separate unit; is that right?**

20 A. Separate unit. Separate agency.

21 **Q. Your agency is the Department of**  
22 **Information Technology; is that correct?**

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1 A. Correct.

2 Q. I'd like to now ask you some questions  
3 about a cd rom that the State recently produced to  
4 Defendants that contains claims data from 1991,  
5 through 2003.

6 Are you familiar with the CD that I'm  
7 referring to?

8 A. I believe so.

9 Q. Is there anybody else in your Department  
10 who would be familiar with the information that would  
11 be on that CD?

12 A. No.

13 Well, there is one person familiar with the  
14 data. She wouldn't be familiar with the CD.

15 Q. Who would that be?

16 A. Her name is Linda Hibbard

17 Q. What exactly was your role in producing the  
18 CD?

19 A. I extracted the data from our archive  
20 files. I downloaded it to a PC and I wrote it to the  
21 CD. That's how I basically created it.

22 Q. The data was stored on some sort of main

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1 **frame or some sort of data base?**

2 A. They're stored on 3480 cartridges.

3 **Q. Where are those kept?**

4 A. We have one copy at our computer facility  
5 which is over on 3rd Street and we have one copy  
6 that's off site that I don't have a clue where that  
7 is.

8 **Q. Could you please describe specifically the**  
9 **steps you took to take the data and put it onto a CD?**

10 A. Sure.

11 First what I did is went into our file  
12 manager product and figured out the location what we  
13 call the trans code. Because we only wanted drug  
14 claims that's a transaction type 3. I found the  
15 location of that.

16 Then I setup JCLP using a product that we  
17 call a selector to select all records in that field.  
18 I wrote all those off to 3480 cartridges.

19 We store our data quarterly. I created a  
20 data set for each year. I used our paid claim file  
21 and what we call our excluded claim file.

22 The excluded claims are a hundred percent I

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1 think State monies. But Medicaid would have to  
2 verify that.

3 Once I had them all written to 3480  
4 cartridges on the main frame I downloaded them using  
5 FTP to one of our FTP sites on the server.

6 **Q. Okay.**

7 A. Then I copied them to the drive on my PC,  
8 set them up and wrote them on CD.

9 I created two sets. I created one CD that  
10 had accepted files and then I created a whole series  
11 of CD's that had the unaccepted data.

12 **Q. We got one CD. I assume that would be the**  
13 **one with the zipped files.**

14 A. I think you have to ask Tim that.

15 I gave Tim the CD's. And after that I  
16 don't know what happened to it.

17 **Q. I guess I didn't understand much of that**  
18 **last answer to be frank.**

19 I guess I would just like to know exactly  
20 what types of claims you searched for to put on the  
21 CD.

22 A. Again, they were transaction-type 3's that

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1 are pharmacy claims or drug-type claims.

2 The way I understand it is there's  
3 provider- type 28's which are pharmacy claims.

4 Provider-type 33's which are durable medical  
5 supplies. Provider-type 37's which are the IV therapy  
6 claims.

7 **Q. Were all those included?**

8 **A.** All those were included.

9 MR. LITOW: At this time I'd like to ask  
10 the court reporter to mark as Exhibit Swenson 001 and  
11 Exhibit Swenson 002, Exhibit Swenson 001 being a  
12 document which is entitled WL80WKBL.txt and Exhibit  
13 Swenson 002 will be a document entitled  
14 WL80ah27sample.txt.

15 (Exhibit Swenson 001 and  
16 Exhibit Swenson 002 marked for  
17 identification.)

18 MS. BRECKENRIDGE: On the record we would  
19 like to mark Exhibit Swenson 002 as highly  
20 confidential. This was produced to Defendants.

21 At the time it was produced it was not  
22 clear to counsel there is patient identifying

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1 information on there.

2 We will work on a break or perhaps it will  
3 come out in the course of your questioning what the  
4 patient identifying information is.

5 BY MR. LITOW:

6 Q. Take a moment to look over those two  
7 documents for me, please.

8 A. Okay.

9 Q. Can you please tell me what these documents  
10 are?

11 A. Exhibit Swenson 001 is a COBOL record  
12 layout we use for our adjudicating claims file. So it  
13 contains all the field names, their links and any  
14 characteristics about them.

15 Exhibit Swenson 002 is some sample data  
16 that I pulled off ancient history tape 27. I believe  
17 it's all drug claims.

18 Q. For what years did you search for and put  
19 on the CD, the claims data?

20 A. The years Tim asked me for. I believe  
21 they're January 1, 1991, through September 30, 2003.

22 Q. I would like you to keep these documents in

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1 front of you and feel free to refer to either one as  
2 necessary to answer the following questions --

3 A. Okay.

4 Q. -- and clarify which one for the record  
5 you're referring to.

6 A. Will do.

7 Q. Exhibit Swenson 001, the data fields, or I  
8 might call it a data dictionary at times, appears to  
9 have some type of hierarchal format that has pairs of  
10 digits in the beginning of each line. The 05, 10,  
11 15.

12 Do you see that?

13 A. Yes, I do.

14 Q. What's the meaning of that hierarchy?

15 A. It's a standard COBOL record structure.  
16 The smaller the number -- it's a breakout of data.

17 So the higher number is a breakout of the  
18 smaller number data. So if we look at the first one,  
19 the 05 IC-PERSON-DATA, and then that to the next 05  
20 level would be one set of data.

21 Hopefully if it's set up correctly it's  
22 somehow related.

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1           The next one, IC-PROVIDER-DATA, the 05 IC-  
2 PROVIDER-DATA, hopefully that would all be related to  
3 provider information.

4           So the 10 -- all the 10 levels are just  
5 breakouts of the 05.

6           Then when we get down to the 10-IC-NAME or  
7 it's broken down into 15 IC-LAST, 15 IC-END, that's  
8 just a breakout of the name which says the first 10  
9 characters are the last name. The next character is  
10 the first initial.

11           **Q. Again, staying with Exhibit Swenson 001,**  
12 **the data field dictionary also contains a column what**  
13 **appears to be format indicators such as PIC X, PIC**  
14 **X(7).**

15           **Do you see that?**

16           A. Yes, I do.

17           MS. BRECKENRIDGE: I object.

18           Can we clarify if everybody is talking  
19 about the same thing as the data dictionary?

20           MR. LITOW: Sure. I'm talking about  
21 Exhibit Swenson 001.

22           MS. BRECKENRIDGE: Do you consider that a

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1 data dictionary?

2 THE WITNESS: Very limited one.

3 It's more of a COBOL record layout. A data  
4 dictionary would have more of what the field  
5 definitions were.

6 BY MR. LITOW:

7 Q. I'll refer to it as Exhibit Swenson 001  
8 then. I don't want to call it a dictionary if it's  
9 not.

10 MS. BRECKENRIDGE: I don't care as long as  
11 you two are talking about the same thing.

12 Based on my conversation I wasn't sure you  
13 two have the same idea of a data dictionary.

14 BY MR. LITOW:

15 Q. I think my question was about the format  
16 indicators PIC X, PIC X(7), those numbers.

17 What does that mean?

18 A. Those are fairly standard -- those are  
19 standards COBOL definitions.

20 The PIC X would mean it would be one  
21 character. Alpha numeric.

22 The PIC X(11) would be 11 characters out

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1 from numeric. The PIC 999 would be three characters  
2 numeric.

3 If we go down further the one that's PIC  
4 S9(4)V99, then would be a signed numeric field. The  
5 V would be where the decimal is. The 4 would say  
6 there's four numbers in front of the decimal and two  
7 numbers after the decimal.

8 **Q. Is there a document that exists that**  
9 **basically defines or describes all these fields?**

10 A. Yes.

11 **Q. What document would that be?**

12 A. I would say any COBOL textbook would define  
13 them.

14 When I went out and got my definitions I  
15 just went to the Internet and did a search on them  
16 and found a site.

17 I can give you the site that has a  
18 definition of all these.

19 **Q. By fields I'm referring to the things that**  
20 **are on the left column of the document. You know,**  
21 **PROVIDER-DATA.**

22 **Is there a document that defines what all**

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1     **those mean?**

2             A.    No, there isn't.

3             **Q.    Do you know if the data is limited to**  
4     **Medicaid fee for service claims or whether it**  
5     **includes claims relating to other payors?**

6             MS. BRECKENRIDGE:  Are you talking about a  
7     particular field?

8             MR. LITOW:  I'm just referring to the data  
9     set in general we received.

10            THE WITNESS:  What I supplied was drug  
11     claims only.  I don't know if we did -- we did store  
12     our managed care claims in the same record layout on  
13     the same tapes.

14            They would be stored under either provider  
15     type 40 or provider type 62.  I don't think they  
16     contained any drug information.

17     BY MR. LITOW:

18            **Q.    Is there a field you could point to that**  
19     **would indicate to which entity the claim relates,**  
20     **whether it's a pharmacy or some other type of**  
21     **provider?**

22            A.    Yes.

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1           On Exhibit Swenson 001, there's actually a  
2 couple. If we go to page 3 right after the first 05  
3 level the IC-CONTROL-DATA, the 10 level is an IC-  
4 SYSTEM-CONTROLS.

5           The next level is 15 IC-TRANS-TYPE. Drug  
6 claims would all have a 3 in that location.

7           Then on Exhibit Swenson 001, page 1, below  
8 the second 05 level the IC-PROVIDER-DATA there's a 15  
9 level that says IC-VENDOR. Right below there there's  
10 a 20 level IC-VENDOR code.

11           Numbers with a 28 and a 37 would be -- are  
12 drug claims. 33 is also. There's one of them,  
13 either 33 or 37, that could be outpatient, too.

14           MS. BRECKENRIDGE: I'm sorry. Which line  
15 did you point to?

16           THE WITNESS: The IC-VEN code.

17           I forget which one, either 37 or 33, could  
18 also be paid I think as transaction type 2.

19           But those wouldn't have been included on  
20 the data I sent you.

21 BY MR. LITOW:

22           **Q. I think you testified earlier that a type**

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1 28 was a pharmacy claim; is that correct?

2 A. Correct.

3 Q. So if it had a 28 in that field it would be  
4 a pharmacy claim, correct?

5 A. Yes.

6 Q. 37 would be IV therapy, correct?

7 A. Correct.

8 Q. Do you know if specialty pharmacy  
9 transactions such as those found in long term or  
10 nursing care facilities would be included in this  
11 data?

12 A. I think so.

13 Q. Do you know which fields would  
14 differentiate them from pharmacy transactions?

15 A. Exhibit Swenson 001, page 1, right before  
16 the second 05 there's IC-RESIDENCE. If it has an N  
17 in that field it would be a nursing facility.

18 And I think the other value was an O. I'm  
19 not sure what that stands for.

20 Then Exhibit Swenson 001, page 2, I think  
21 it's line 17, IC DRUG-NURSE-FACILITY, that would  
22 contain a value if it was a nursing facility.

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1           Either contain the provider number of the  
2           nursing facility or it will contain a default value.

3           **Q.    If it's not a nursing facility there will**  
4           **be no number in that field?**

5           A.    Un-huh.  It should contain just spaces.

6           **Q.    Do you know if the ingredient cost and the**  
7           **allowed amount would be included in the data that we**  
8           **received?**

9           A.    No.

10          **Q.    You don't know or it would not be?**

11          A.    It's not included.

12          **Q.    I would like to direct your attention to**  
13          **page 3 of Exhibit Swenson 001.  I'm sorry.  Go to**  
14          **page 2 of Exhibit Swenson 001.**

15                The third field up from the bottom, I think  
16           it's a 10 level IC-BILL-AMT-X.

17                Do you see that?

18          A.    Yes.

19          **Q.    Do you know what that field means?**

20          A.    That's the amount that the provider bills  
21          Medicaid.  The X at the end just means if we want to  
22          look at it as an alpha numeric value we'd look at

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1 that one. You look at that one below that if we want  
2 to look at as a numeric value.

3 Q. And then the last one on page 2 of  
4 Exhibit Swenson 001 IC-OTH-PD-X, do you see that?

5 A. Yes I do.

6 Q. What does that refer to?

7 A. The other paid amount.

8 You'd have to check with Medicaid to be  
9 sure about this but I believe it's any amount that  
10 other insurance paid or possibly Medicare may have  
11 paid. Some other entity paid for this.

12 Q. Then the very next one which is on page 3,  
13 the first one, IC-OTH-PD, what does that mean?

14 A. That's the patient paid amount. For drug  
15 claims it would be a co-pay amount.

16 It should be zero for all the drug claims.

17 Q. So if there were a co-pay that would be  
18 where it would be reflected?

19 A. Correct.

20 Q. Then three down from that one, looking at  
21 IC-SAMI-AMT-X, do you see that?

22 A. Yes.

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1 Q. What does that mean?

2 A. That's the amount we pay the provider on  
3 the claim.

4 Q. You say we.

5 You mean Medicaid?

6 A. That Medicaid paid. Correct.

7 Q. Then the one just below that, IC-SAMI-AMT,  
8 there's no X.

9 What does that mean?

10 A. That's the numeric version of that paid  
11 amount or the SAMI amount.

12 Problematically depending on how we want to  
13 look at it some times you just want to look at it  
14 alpha numeric and sometimes numeric. We would use  
15 either one of those.

16 Q. Is there a field that captures the  
17 particular pricing basis that was used to determine  
18 what was paid, whether it was MAC or AWP or WAC or  
19 anything like that?

20 A. No, there isn't.

21 Q. Do you understand what I'm referring to  
22 when I use those terms?

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1 A. Yes.

2 Average wholesale price.

3 I'm not sure what SUL is. But something  
4 upper limit.

5 Q. That particular wouldn't be reflected in  
6 any of these fields?

7 A. No, it wouldn't.

8 Q. Do you know which fields that are included  
9 on Exhibit Swenson 001 have been omitted from the  
10 data that was produced by the State, if any?

11 A. When I created the CD I didn't exclude any  
12 data. So no data was excluded.

13 Except again all I selected were the  
14 transaction type 3's. We still have inpatient,  
15 outpatient and EPSDT claims on our claims files.

16 Q. For example, going to page 1 of Exhibit  
17 Swenson 001 the very first 05 level, you go down  
18 about six or seven ones, do you see the 10 level IC-  
19 SSN?

20 A. Yes, I do.

21 MS. BRECKENRIDGE: I don't. I'm sorry.

22 MR. LITOW: On the first page of Exhibit